



NORTH SIDE ENERGY CENTER

Case No.: 17-F-0598

1001.31 Exhibit 31

Local Laws and Ordinances

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Exhibit 31: Local Laws and Ordinances

This Exhibit will track the requirements of Stipulation 31, dated February 10, 2021, and therefore, the requirements of 16 New York Codes, Rules and Regulations (NYCRR) § 1001.31.

All of the local law provisions discussed herein are contained in the Town of Massena Zoning Code (2009), the Town of Massena Local Law No. 2 of 2020: A Local Law to Regulate Solar Energy Facilities, the Town of Brasher Zoning Regulations (Local Law No. 2 of 2020), the Code of the Town of Norfolk (2012), and the Town of Norfolk Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities, copies of which are attached hereto as Appendices 31-1 through 31-5, respectively. The Town of Brasher passed Local Law 2 of 2020 on December 9, 2020, enacting a new Zoning Code to replace the 1993 zoning code, the latter of which was referenced in this Project's Preliminary Scoping Statement (PSS). Note that the new 2020 Zoning Code for the Town of Brasher is attached hereto as Appendix 31-3. Additionally, at the time of publishing of the PSS, the Project was assumed to fall under the regulation of the Town of Brasher Local Law No. 5 of 2018: Solar Energy Facilities Law. The Town of Brasher Zoning Code (Local Law 2 of 2020) incorporates Local Law 5 of 2018, and therefore supersedes this law.

The North Side Energy Center (Project) will be located in the Towns of Massena, Brasher, and Norfolk (the Towns) in St. Lawrence County, New York. Varying portions of the Project are located within the Residential-Agricultural (R-A) District within the Town of Massena, the Rural (R) and Resource Conservation (RC) Districts within the Town of Brasher, and the Residential-Agricultural (R-A) and Commercial-Highway (C-H) Districts within the Town of Norfolk. The Applicant has been implementing the Public Involvement Program (PIP) Plan for the Project as described in Exhibit 2. The Applicant has consulted with the Towns, St. Lawrence County, landowners, and the St. Lawrence County Industrial Development Agency (IDA) and others as part of the PIP Plan. The Meeting Log is included as Appendix 2-4. Outreach to municipal stakeholders has included participation in town board meetings and virtual open house events to introduce the Applicant and the Project to the community. Coordination included the Applicant providing Project-specific information to the municipalities, as well as consulting and responding to comments from agency stakeholders, such as the United State Fish and Wildlife Service (USFWS) and the New York State Department of Environmental Conservation (NYSDEC), among others. The Applicant is also working with the Towns of Massena (Supervisor Steve O'Shaughnessy), Brasher (Supervisor Mark A. Peets), and Norfolk (Supervisor Charles A. Pernice), the Massena Central School District

(Superintendent Patrick Brady), and the St. Lawrence County IDA with the intention of executing a Payment in Lieu of Taxes (PILOT) agreement prior to construction of the Project.

Outreach to the Towns for agreement on substantive and procedural requirements has been performed in accordance with the Article 10 requirements, and results of the coordination are summarized in the following sections.

31(a) Local Procedural Requirements Applicable to Construction/Operation of the Project Supplanted by Article 10

The following section contains lists of local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the construction and operation of the Project that are of a procedural nature for the Towns of Massena, Brasher, and Norfolk. These local procedural requirements are supplanted by Public Service Law (PSL) Article 10 unless the Siting Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.

Town of Massena Zoning Code (2009), see Appendix 31-1

- Article XIII: Site Plan Approval
 - § 207-55. Site plan approval required for issuance of building permit
 - § 207-56. Procedure
 - § 207-57. Plan elements
- Article XIV: Special Use and Site Plan Review Procedures
 - § 207-62. Application and site plan required
 - § 207-63. Waivers
 - § 207-64. Hearing and decision
 - § 207-65. Other procedures
 - § 207-66. Special use review criteria
- Article IX: Supplementary Regulations

- § 207-41. Discretionary landscaping standards applicable to special uses

Town of Massena Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities, see Appendix 31-2

- Section 1: Amending the Town Code of Massena to include Solar Energy Facilities;
 - F: Major Solar Systems
 - 1. Special Use Permit and Site Plan Review
 - (d)(i) Requirement to Send Site Plan Application to Fire Department
 - (d)(ii) Evidence of Cybersecurity Measures
 - 2. Decommissioning
 - (b) Decommissioning Plan included with Application, excluding certain substantive requirements, detailed below.
 - G: Special Use Permit Requirements
 - H. Fees

Town of Brasher Zoning Regulations (Local Law No. 2 of 2020), see Appendix 31-3

- Article V. Special Permit Standards and Requirements;
 - Section 28 General Standards for Special Uses;
 - Section 29 Permitted Special Uses – Specific Standards
- Article VIII. Solar Energy Systems;
 - Section 41. Large-Scale Solar Energy Systems
 - A. Special Use Permit and Site Plan Review;
 - C. Special Use Permit Application Requirements
 - Section 42. Special Use Permit Standards

- E. Fencing Type to be Approved by Planning Board
 - G. Town Conditions for Special Use Permits and SEQRA
 - L. Evidence of Cybersecurity Measures
- Section 43.B. Abandonment and Decommissioning Procedural Requirements of Engineer's Review of Estimate
- Article IX. Administration and Enforcement

Code of the Town of Norfolk (2012), see Appendix 31-4

- Chapter 150: Land Use and Development;
 - Part 2 Zoning;
 - Article X. Special Uses; Section 150-57 Applicability; review; fees for annual operating permits
 - Article XI. Administration and Enforcement

Town of Norfolk Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities, see Appendix 31-5

- Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities;
 - E: Major Solar Systems
 - 1. Special Use Permit and Site Plan Review
 - 2.(a)(v) Approval of Landscaping by Planning Board
 - 2.(d)(i) Requirement to Send Site Plan Application to Fire Department
 - 4. Decommissioning

- (b)(i)(a)(1-7) & (b)(ii-vi) Decommissioning Plan Procedural Requirements, excluding certain substantive requirements detailed below.
- F: Special Use Permit Requirements
 - 1.(a) Verification of Utility Notification
 - 1.(b) Agent's Name
 - 1.(c) Agricultural Data Statement
 - 2. Lease Documentation
 - 3. Site Plan Approval
 - 4. Blueprints of Layout
 - 5. O&M Plan
 - 6. Cyber Security
 - 7. Community Benefit Agreement
- G. Fees

31(b) Local Procedural Requirements Requested to be Expressly Authorized by the Board

Except with respect to the New York State Uniform Fire Prevention and Building Code, as explained below, the Applicant does not request the Siting Board to authorize a municipality to implement any local procedural requirements.

31(c) Review and Approval of Compliance with Building Codes

The Towns of Massena, Brasher, and Norfolk have adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into their local electric, plumbing and building codes; therefore the Applicant may make a request to the Siting Board during the Article 10 proceeding pursuant to subdivision (b) of this section that the Siting Board expressly

authorize the exercise of the electric, plumbing, and building permit application, inspection, and certification processes by the Towns of Massena, Brasher, and Norfolk.

The Code Enforcement Officers for the Towns of Massena, Brasher, and Norfolk are responsible for reviewing and approving building plans, inspecting construction work, and certifying compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing, or building code. If necessary, the Code Enforcement Officer(s) can hire consultants to assist with the review and approval. To the extent the Applicant requests the Siting Board to make the aforementioned authorization to the Town(s), the Applicant is willing to fund those consultations, to the extent such fees are not paid for from the fund for municipal and local party intervenors. Alternatively, the Applicant may request to submit for review the building plans to an entity qualified by the NYS Department of State, in order to obtain compliance certified with the NYS Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of NYS, and the substantive provisions of any applicable local electrical, plumbing, or building code. Said demonstration would be filed with the Secretary or as a compliance filing with the Siting Board.

31(d) Substantive Requirements

This section identifies the local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the proposed Project that are of a substantive nature. The text of these substantive requirements and the Project's compliance with them are presented in the sections and tables below.

Town of Massena Zoning Code (2009), see Appendix 31-1

- Article IV: R-A Residential-Agricultural District; Section 207-17. Minimum lot area and dimensions
- Article IX: Supplementary Regulations; Section 207-33 Sign regulations
- Article IX: Supplementary Regulations; Section 207-35 Uses prohibited in all districts

Town of Massena Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities, see Appendix 31-2

- Section 1: Amending the Town Code of Massena to include Solar Energy Facilities;
 - F: Major Solar Systems,
 - 1(a) Height and Setback Restrictions
 - 1(b) Design Standards
 - 1(c) Signs
 - 2. Decommissioning
 - 3. Abandonment and Removal

Table 31-1. Town of Massena Zoning Dimensional Requirements Summary for Major Solar Systems within the R-A District – Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities

Dimensions	Dimensional Requirements	
	R-A District	Provided
Maximum Panel Height	20 Feet	< 20 Feet
Minimum Setbacks	25 Feet from property lines, unless adjacent to residential neighbor; the setback for residential neighbors shall be 100 feet	90 feet minimum from solar array to property line; 212 feet minimum from solar array to residential neighbor's residence
Fence Requirement	Solar facilities greater than 5 acres must have fence	Fence provided
Access Road Maximum Width	16 Feet	12 feet maximum for all solar array access roads; 20 Feet maximum for single access road to collection substation*
Minimum Fence Height (feet)	7 Feet	7 Feet
Maximum Sign Size (square feet)	12 Square Feet	< 12 Square Feet

**Indicates Waiver Required*

Town of Brasher Zoning Regulations (Local Law No. 2 of 2020), see Appendix 31-3

- Article III. District Regulations;
 - Section 14 Rural District (R);
 - D. Uses Allowed by Special Permit
 - E. Lot and Yard Specifications
 - Section 18 Resource Conservation District (RC)
 - B. Permitted Uses

- Article IV. General Standards;
 - Section 19 Lot Area, Lot Width and Yards
 - Section 26 Sign Regulations

- Article VIII. Solar Energy Systems
 - Section 41.A Allowed Zoning Districts
 - Section 42.A, B, C, D, F, H, I, J & K Special Use Permit Standards
 - Section 43.A & C. Abandonment and Decommissioning

Table 31-2. Town of Brasher Zoning Dimensional Requirements Summary for Large-Scale Solar Energy Systems- in R-Rural Zoning District – Town of Brasher Zoning Regulations (Article VIII, Section 42 Local Law No. 2 of 2020)

Dimensions	Dimensional Requirements	Provided
	All Districts	
Minimum Setback	Large-scale solar: None Established*	20 feet
Minimum Side Yard Setback	Large-scale solar: None Established*	20 feet

Table 31-2. Town of Brasher Zoning Dimensional Requirements Summary for Large-Scale Solar Energy Systems- in R-Rural Zoning District – Town of Brasher Zoning Regulations (Article VIII, Section 42 Local Law No. 2 of 2020)

Dimensions	Dimensional Requirements	Provided
	All Districts	
Maximum Height	25 Feet	<20 Feet
Minimum Lot Size	5 acres	>5 acres
% Maximum Lot Coverage	80%	28%
Minimum Fence Height	As determined by Planning Board	7 Feet
Maximum Road Width	16 Feet	12 Feet
Minimum Above Ground Transmission Line Ground Clearance	18 Feet	Feet (from switchyard to existing transmission line)

* Section 42.A indicates that setbacks are determined by underlying zoning district; however, no setbacks are defined for solar use in Article III District Regulations for Rural District (R).

Code of the Town of Norfolk (2012), see Appendix 31-4

- Chapter 150: Land Use and Development; Part 2 Zoning;
 - Article IX. Supplementary Regulations; Section 150-45 Lots: standards; nonconformities; exceptions
 - Article IX. Supplementary Regulations; Section 150-46 Walls; fences; hedges; visibility at street intersections

Town of Norfolk Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities, see Appendix 31-5

- Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities; E:

- Major Solar Systems 1: Allowed Zoning Districts
- Major Solar Systems 2:
 - (a) Height and Setback Restrictions
 - (b) Design Standards
 - (c) Signs
- Major Solar Systems 3. Secondary Containment Requirements
- Major Solar Systems 4(a). Bond Escalator
- Major Solar Systems 4(b)(i)(b). Decommissioning Abandonment and Removal Requirements
- F: Special Use Permit Requirements
 - 8. Notifications

Table 31-3. Town of Norfolk Zoning Dimensional Requirements Summary for Major Solar Systems within the R-A and C-H Districts – Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities

Dimensions	Dimensional Requirements	Provided
Minimum Setbacks	25 Feet from property lines, unless adjacent to residential neighbor; the setback for residential neighbors is 100 feet	102 feet minimum from solar array to property line; 177 feet minimum from solar array to residential neighbor's residence
Maximum Height	15 Feet	18 Feet*
Fence Requirement	Solar facilities greater than 5 acres must have fence	Fence provided
Access Road Maximum Width	16 Feet (along agricultural fields)	12 Feet

Table 31-3. Town of Norfolk Zoning Dimensional Requirements Summary for Major Solar Systems within the R-A and C-H Districts – Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities

Dimensions	Dimensional Requirements	Provided
Minimum Fence Height (feet)	6 Feet	7 Feet
Maximum Sign Size (square feet)	12 Square Feet	< 12 Square Feet

**Indicates Waiver Required*

31(e) Local Substantive Requirements Applicant Requests the Board Not Apply

The Project is designed and will operate in compliance with applicable substantive local laws and regulations with the exception of four substantive requirements of the Town of Massena Local Law No. 2 of 2020, one substantive requirement of the Town of Brasher and two substantive requirements of the Town of Norfolk Local Law No. 2 of 2020, listed below.

Town of Massena Local Law No. 2 of 2020: A Local Law to Regulate Solar Energy Facilities

- **Section 1:** Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, 1(a)(ii) Height and Setback Restrictions – Minimum setback from property lines
- **Section 1:** Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, 1(b)(v) Design Standards – Access road width
- **Section 1:** Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, 2(a)(i) Decommissioning Bond
- **Section 1:** Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, 3 Abandonment and Removal

Town of Brasher Local Law No. 2 of 2020: Zoning Regulations

- **Article VIII:** Solar Energy Systems; Section 43, Abandonment and Decommissioning

Town of Norfolk Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities

- **Section 1:** Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities;
 - E. Major Solar Systems 2 (b)(i) Vegetation Removal Offset
 - E. Major Solar Systems 4(a) Decommissioning- Bond Escalator

The Applicant is requesting that the Board elect not to apply these requirements as they are unreasonably burdensome in the view of existing technology, cost/economics, or consumer needs and would prevent the Project from being built.

The land area making up the Project Area is particularly well-suited for development of a solar energy system due to its location directly adjacent to existing electric transmission infrastructure with available capacity and the availability of large, open space. As previously stated, the above requirements would be unreasonably burdensome. As to the needs of consumers, the North Side Energy Center promotes the goals of the Climate Leadership and Community Protection Act (CL&CPA), the Clean Energy Standard (CES), and the most recent State Energy Plan (SEP). Moreover, the North Side Energy Center has executed a contract with New York State Energy Research and Development Authority (NYSERDA) to sell the renewable energy attributes generated by the Project, in furtherance of the aforementioned CL&CPA, CES, and SEP. By adding 180 megawatts (MW) of clean, renewable solar power into the New York State energy market, the Project helps New York State achieve its targets of 70% renewable generation by 2030, zero emissions from the statewide electrical demand system by 2040, an 85% reduction in greenhouse gas emissions by 2050, and the operation of 6 gigawatts (GWs) of solar generation by 2025.

With the exception of those provisions identified above, the Applicant has determined that none of the remaining local substantive requirements are unreasonably burdensome in terms of existing technological, cost/economics, or consumer needs. Therefore, there are no additional substantive requirements that the Applicant is requesting at this time that the Board elect not to apply.

The following provides additional information supporting the Applicant's request that the Siting Board elect not to apply these seven requirements.

(1) Minimum Setback from Property Lines in Massena: Statement of Justification

Section (F)(1)(a)(ii) of the Town of Massena’s solar law states that, for “Major Solar Systems” such as the Project, “[t]he minimum setback from property lines shall be 25 feet, unless adjacent to residential neighbor. The setback for residential neighbors shall be 100 feet.” The Project complies with the minimum setback from property lines of 25 feet. In addition, the Project has a setback of at least 100 feet from all houses of residential neighbors (the minimum setback from a solar array to a residential neighbor’s residence is 212 feet). The Applicant submits that the “setback for residential neighbors” applies to the houses of residential neighbors and therefore the Project complies with this provision.

If, *arguendo*, the Siting Board believes that the 100-foot setback applies to the property lines of neighboring residential properties, the Applicant requests that, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply a 100-foot setback from residential property boundaries because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community that might result from applying a 90-foot setback to such property boundaries rather than a 100-foot boundary. As this Application demonstrates, any potential additional impacts that might result from the Project’s 90-foot setback have been avoided and/or minimized to the maximum extent practicable by proposing vegetative landscape buffers to limit views from residences in these areas.

(2) Access Road Width in Massena: Statement of Justification

Section (F)(1)(b)(v) of the Town of Massena’s solar law states that roadways within the site must have a maximum width of 16 feet. The Applicant requests that, pursuant to 16 NYCRR § 1001.31(e)(1), the Siting Board elect not to apply it because it would be technically impossible, impractical or otherwise unreasonable for the access road to the collection substation, switchyard and interconnection line to be limited to 16 feet. All of the Project’s remaining proposed access roads can comply with the 16 feet restriction. This width is required for the collection and interconnection access road for deliveries of large equipment for the collection substation, switchyard, and interconnection line. These deliveries will come on oversized vehicles that will need wider roads and larger turn radii compared to the typical access road design throughout the

Project Area. Limiting the roads to 16 feet wide, therefore, would impose impractical or otherwise unreasonable restrictions on the Project's construction

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply this provision because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community that might result from allowing the Project's roads to be four feet wider than what the Town's solar law normally permits. As discussed above, limiting this one road to a 16-foot width would prevent the completion of construction of the Project, as the required equipment could not be delivered and installed in the collection substation and switchyard.

(3) Maximum Panel Height in Norfolk: Statement of Justification

Section (E)(2)(a)(i) of the Town of Norfolk's Solar Law limits panel height to 15 feet above the ground. The Project is required to use panels that may reach up to 18 feet in height. As noted in Exhibit 24, future solar industry design trends are indicating that the panels may reach a maximum height of up to 18 feet when at full-tilt with a dual-portrait solar panel orientation. The evolution of the dual-portrait panel orientation is a more efficient, yet slightly taller configuration compared to a single-portrait panel orientation. The maximum height of a tracker system is only sustained for a short period during daylight hours as the racking makes continuous angle adjustments to follow the sun. For example, tracker systems lay flat near mid-day when the sun is directly overhead resulting in a panel height considerably lower than the maximum height of 18 feet during mid-day. As a result, for the majority of the time when the panels will be visible, the tracker system will be less than 18 feet in height.

Therefore, the Applicant requests that, pursuant to 16 NYCRR § 1001.31(e)(1), the Siting Board elect not to apply this maximum height restriction because it would be technically impossible, impractical or otherwise unreasonable. A panel height of 18 feet is required to achieve 180 MW of generating capacity when other environmental constraints are considered. Wetlands, streams and other environmental constraints restrict the amount of space available within the Project Area in which panels can be sited. Employing panels that are three feet taller than the height allowed by the Town's solar law might slightly increase the potential for Project visibility; however, Project visibility has been avoided and/or minimized to the maximum extent practicable as demonstrated in Exhibit 24.

In addition, pursuant to 16 NYCRR § 1001.31(h)(3), the Board should elect to refuse to apply this provision because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant increase in Project visibility that might result from allowing a 18-foot maximum panel height. As noted above, potential visual impacts resulting from the additional three feet in height have been avoided and/or minimized to the maximum extent practicable.

(4) Decommissioning in Massena, Brasher, and Norfolk: Statement of Justification

The Applicant seeks a waiver from several similar local law provisions related to Decommissioning. Section (F)(2)(a)(i) of the Town of Massena's Solar law and Section (E)(4)(a)(i) of the Town of Norfolk's solar law require the Applicant to post a surety for decommissioning of the Project: (1) in the amount of 125% of the projected cost of removal; (2) with an escalator of 2% annually for the life of the Project; and (3) with cash as the preferred surety form. Section (F)(3)(a)(i) of the Town of Massena's solar law, Section (E)(5) of the Town of Norfolk's solar law, and Article VII, Section 43 of the Town of Brasher Zoning Regulations require the Project to be deemed abandoned and decommissioned after it has ceased operating for a continuous one-year period. Pursuant to 16 NYCRR § 1001.31(e)(3), the Applicant requests that the Siting Board elect not to apply these provisions because the needs of consumers outweigh the impacts on the community that would result from refusing to apply them.

With respect to the requirement for a 125% removal cost surety with a 2% escalator and preference for cash, the Applicant requests that the Siting Board elect not to apply these provisions because they would unnecessarily interfere with the successful completion of the Project and the community would not be impacted if they were not applied. New York consumers have a pressing need to reduce greenhouse gas emissions, which has been expressed through the CLCPA, the CES, and the SEP. The Applicant will work with NYSDPS Staff and the relevant municipalities on an acceptable form of security that has been previously approved by the Siting Board and that the decommissioning security will remain active for the life of the Project, until it is decommissioned.

The Applicant is prepared to agree to previously approved Article 10 certificate conditions requiring a compliance filing addressing the requirement for decommissioning plan, subject to consultation with the municipalities, that proposes an estimated decommissioning cost, cost

updating, a letter of credit for the benefit of, and to be exercised by, the municipalities, and a cost escalator. The requirements of the local laws would be duplicative, unnecessary, and a burden on the Project because they are inconsistent with Siting Board precedent. Since the Applicant is prepared to agree to Siting Board approved conditions, the waiver request is the minimum necessary. The Applicant's decommissioning plan, together with agreeing to the previously approved certificate conditions, provides for the safe and efficient removal of all solar facility components and reclamation of the site to substantially pre-construction conditions to the maximum extent practicable and, therefore, there are no adverse environmental impacts associated with granting this waiver request. No design change can reasonably obviate this waiver request as the request is not directly related to Project design. Thus, based upon the needs of consumers, the Siting Board should elect not to apply the requirements that the surety be 125% of the cost of removal, with a 2% escalator and a preference for cash contained in Section (F)(2)(a)(i) of the Town of Massena's solar law and Section (E)(4)(a)(i) of the Town of Norfolk's solar law.

With respect to the requirement to commence decommissioning after a project ceases to operate for 12 months the Applicant requests the Board not apply this requirement because the previously approved certificate conditions address this circumstance and tailor the need for a solar project to commence decommissioning considering the unique needs and circumstances of a solar project, such as the time required to obtain needed replacement parts and/or to make repairs. As noted above, New York residents have a pressing need to reduce greenhouse gas emissions, which has been expressed through the CLCPA, the CES, and the SEP. Certain conditions could arise that prevent a facility from operating or generating electricity for an extended period of time, e.g., as noted above, the need to replace equipment with long lead times due to economic conditions. Since consumer needs would best be met by a fully functioning solar facility that can fulfill its obligations under its NYSEDA contract to help meet the State's renewable energy goals, a longer time period may be necessary under certain conditions before triggering decommissioning activities. The benefits to consumers provided by the Project would be severely reduced if the Project were forced to decommission despite diligent efforts to resume operations by the developer or due to a Force Majeure event. Further, this requirement imposes an unreasonable risk on the Project that creates unnecessary uncertainty that it may have to decommission the Project prematurely, which in turn creates unreasonable financing risk.

Notably, the Department of Public Service Staff and other parties have previously agreed that 12 months is an appropriate length of time to decommission a project if it ceases to operate or

generate electricity while simultaneously approving exceptions to that timeframe. In *East Point Energy Center, LLC* (Case 17-F-0599), the Commission approved a Certificate Condition requiring decommissioning after 12 continuous months of not generating electricity *unless* the 12-month period of no energy output is the result of (1) a repair, restoration, or improvement to an integral part of the Project that affects the generation of electricity and that repair, restoration, or improvement is being diligently pursued by the developer or (2) a Force Majeure event (*see also* Case 17-F-0597, *High River Energy Center LLC*, High River Certificate Conditions, Certificate Condition 51(f) (certificate condition with the same language as the condition in *East Point Energy Center, LLC*).

For these reasons, based upon the needs of consumers, the Applicant requests the Board to elect not to apply these local provisions.

(5) Vegetation Removal Offset in Norfolk: Statement of Justification

Section (E)(2)(b)(i) of the Town of Norfolk's solar law requires the Applicant to minimize or offset the removal of trees and other existing vegetation with planting elsewhere on the property. Pursuant to 16 NYCRR § 1001.31(h)(3), the Applicant requests the Board elect not to apply this provision to the extent that it requires offset planting elsewhere on the property because the urgent needs of consumers to have GHG emissions reduced, through the goals, targets and strategies embodied in the CL&CPA, CES, and SEP, outweigh the potential insignificant impacts to the community that might result from refusing to apply it.

The Applicant is committed to limit tree and vegetation clearing to the minimum necessary for Facility construction. Furthermore, other site constraints such as wetlands, streams, and the need to collocate Project Components, prevent the Applicant from siting Project Components in areas where trees and vegetation do not exist. To minimize impacts to the maximum extent practicable, the Applicant will reseed all disturbed areas and will plant 18,495 linear feet of new trees and vegetative buffer, as shown on the Preliminary Landscaping Plan and as described in Exhibit 24 and the Visual Impact Assessment (Appendix 24-1).

Accordingly, the needs of consumers for the Project outweigh the impacts on the community that would result from refusal to apply this requirement. The local offset requirement would require local approval and under Siting Board precedent (Case 17-F-0599, *East Point Energy Center Order Granting Certificate of Environmental Compatibility and Public Need*) is a procedural requirement supplanted by Article 10. Nevertheless, imposing the requirement would needlessly

interfere with the successful completion of the Project, thereby creating an unnecessary obstacle to achieving the clean energy and greenhouse gas emission reduction standards required by the CLCPA, CES, and SEP. Since the Application already proposes to avoid vegetation clearing to the maximum extent practicable and to avoid clearing vegetation outside array areas to minimize potential visual impacts, this waiver request is the minimum necessary. No design change can reasonably obviate this waiver request. The Applicant minimized the Project's visibility through siting and design choices—such as siting Project Components in a manner that uses existing vegetation to screen the Project—and, through proposing multiple vegetative buffers at locations where there would be Project visibility. Therefore, the potential environmental impacts are minimized to the maximum extent practicable. See Exhibit 24 and the VIA for a more detailed discussion of the Applicant's measures to avoid and/or minimize potential Project visibility. Thus, based on the needs of consumers, the Siting Board should elect not to apply the requirement to offset cleared vegetation contained in Section (E)(2)(b)(i) of the Town of Norfolk's solar law.

31(f) Procedural Requirements Applicable to Interconnections in Public Rights of Way

The Applicant has determined that there are no procedural requirements applicable in local laws or regulations to the interconnection or use of water, sewer, or telecommunication lines that are applicable to the Project.

31(g) Substantive Requirements Applicable to Interconnections in Public Rights of Way

The Applicant has determined that there are no substantive requirements in local laws or regulations applicable to the interconnection or use of water, sewer, or telecommunication lines that are applicable to the Project.

31(h) Requirements Applicable to Interconnections in Public Rights of Way that the Applicant Requests the Board Not Apply

As there are no procedural or substantive requirements applicable to the interconnection or use of water, sewer, or telecommunication lines as identified above in Section 31(f) and 31(g), there are no requirements that the Applicant is requesting that the Board elect not to apply.

31(i) List of Applicable Local Substantive Requirements and Compliance Assessment

The table below presents a list of all applicable substantive requirements to the Project and a description of how the Applicant plans to adhere to those requirements.

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
Town of Massena	
Town of Massena Zoning Code (2009)	
<p>Article IX: Supplementary Regulations; Section 207-33 Sign regulations</p> <p>C. Signs in residential districts (R-1 and R-A)</p> <p style="padding-left: 40px;">2) Signs for other uses shall not be larger than 32 square feet nor more than eight feet above the ground at maximum height nor more than two in number.</p> <p style="padding-left: 40px;">3) Freestanding signs may be located within required front yards, but no closer than 25 feet from the pavement.</p>	<p>The Project will comply with the substantive standards as identified in this section.</p>
<p>Article IX: Supplementary Regulations; Section 207-34 Parking and storing of vehicles</p> <p>A. Uses not listed: As determined by the Planning Board to be needed to prevent frequent parking on the streets by persons visiting or connected with such use.</p>	<p>The Project will comply with the substantive standards as identified in this section.</p>
<p>Article IX: Supplementary Regulations; Section 207-35 Uses prohibited in all districts</p> <p>The following uses are prohibited in all districts:</p> <p style="padding-left: 40px;">B. Artificial lighting facilities of any kind with light sources visible beyond the lot lines which create a glare beyond such lines.</p>	<p>The Project will comply with the substantive standards as identified in this section.</p>
Town of Massena, Local Law No. 2 of 2020: A Local Law to Regulate Solar Energy Facilities	
<p>Section 1: Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, (a) Height and setback restrictions</p>	<p>The Project will comply with the substantive standards as identified in this section. In the alternative, a waiver is requested for setbacks.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<ul style="list-style-type: none"> i. The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 20 feet in height above the ground. ii. The minimum setback from property lines shall be 25 feet, unless adjacent to residential neighbor. The setback for residential neighbors shall be 100 feet. iii. Fencing may be provided around all equipment and solar collectors to provide screening from adjacent residential properties and roads. Fencing shall not be barbed wire. When fencing will enclose the perimeter of the site or facility, wildlife friendly fencing that allows the passage of small mammals and reptiles and is designed to minimize wildlife injury and death due to entanglement or strangulation shall be used on sites having a solar facility footprint greater than 5 acres. Exceptions can be made by the planning Board for sites that have limited surrounding wildlife habitat. vii. 	
<p>Section 1: Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, (b) Design standards</p> <ul style="list-style-type: none"> i. For adjoining arrays, the number of features installed for the facility should be consolidated and kept to a minimum, such as the use of shared access roads and fencing. ii. Removal of trees and other existing vegetation should be minimized or offset with planting elsewhere on the property. iii. To the extent practicable, Major Solar Systems located in Prime Farmland or Farmland of Statewide importance, shall be constructed in accordance with the solar construction mitigation requirements of the 	<p>The Project will comply with the substantive standards as identified in this section, with the exception of (V), for which a waiver is being requested. See Section 31(e) above.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>New York State Department of Agriculture and Markets.</p> <p>iv. Proposed major solar collection systems shall minimize the displacement of prime soils that are in active agricultural production.</p> <p>v. Roadways within the site shall be built along field edges and along elevation contours where practical, constructed at grade and have a maximum width of 16 feet. Roadways shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.</p> <p>vi. All on-site utility and transmission lines shall, to the extent feasible, be placed underground. Any above ground transmission lines that are used to accommodate the facility shall require utility poles that are tall enough and installed at widths able to accommodate farm machinery and equipment. The installation of guy wires to utility poles is discouraged.</p> <p>vii. All mechanical equipment, including any structure for batteries or storage cells, shall be enclosed by a minimum 7-foot-high fence, as required by National Electric Code (NEC), with a self-locking gate to prevent unauthorized access.</p> <p>viii. Any exterior lighting installed within the facility shall be downcast and dark sky compliant with recessed bulbs and full cut off shields.</p>	
<p>Section 1: Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, (c) Signs</p> <p>i. A sign not to exceed twelve square feet shall be displayed on or near the main</p>	<p>The Project will comply with the substantive standards as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>access point and shall list the facility name, owner and phone number.</p> <p>ii. As required by NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations not to exceed four square feet.</p>	
<p>Section 1: Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, 2. Decommissioning</p> <p>Prior to removal of a Major Solar Collection System, a demolition permit for removal activities shall be obtained from the Town of Massena.</p> <p>a. Decommissioning Bond:</p> <p>i. Prior to issuance of a building permit for a Major Solar Collection System, the owner or operator of the Solar Energy System shall post a surety in an amount and form acceptable to the Town for the purposes of removal in the event the Major Solar Collection System is abandoned. The amount of the surety required under this section shall be 125% of the projected cost of removal of the Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. Acceptable forms shall include, in order of preference: cash; irrevocable letter of credit; or a bond that cannot expire; or a combination thereof. Such surety will be used to guarantee removal of the Major Solar Collection System should the system be abandoned. In such case, the Town Building</p>	<p>The Applicant is requesting waivers for all substantive standards in this section. See Section 31(e) above. Siting Board precedent will be followed.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>Inspector/Code Enforcement Officer shall then provide written notice to the owner or operator to remove the Major Solar Collection System, and the owner or operator shall have one (1) year from written notice to remove the Solar Energy System.</p> <p>b. Decommissioning Plan:</p> <p>ii. In areas where agricultural production will resume, re-vegetation shall include native plants and seed mixes and exclude any invasive species. The reclamation of land when the Major Solar Collection System is decommissioned shall include the removal of rock, construction materials and debris to a depth of 4 feet, the decompaction of soils to a depth of 18 to 24 inches, regrading and reseeding the site to its original condition prior to the project construction.</p>	
<p>Section 1: Amending the Town Code of Massena to include Solar Energy Facilities; F: Major Solar Systems, 3. Abandonment and Removal</p> <p>a. A Major Solar Collection System shall be deemed to be abandoned after it has ceased operating for a continuous one (1) year period.</p> <p>b. Upon cessation of operations of a Major Solar Collection System for a period of one (1) year, the Town may notify the owner and/or operator of the facility to implement the Decommissioning Plan. Within one-hundred and eighty (180) days of notice being served, the owner and/or operator can either restore operation equal to 80% of</p>	<p>The Applicant is requesting waivers for all substantive standards in this section. See Section 31(e) above. Siting Board precedent will be followed.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>approved capacity or implement the Decommissioning Plan.</p> <p>c. In the event that construction of the Major Solar Collection System has been started but is not completed and functioning within eighteen (18) months of the issuance of the final Site Plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within three hundred and sixty-five (365) days. If the owner and/or operator fail to perform, the Town may require the owner and/or operator to implement the Decommissioning Plan. The decommissioning plan must be completed within one-hundred and eighty (180) days of notification by the Town to implement the Decommissioning Plan.</p>	

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
Town of Brasher	
Town of Brasher Zoning Regulations (Local Law No. 2 of 2020)	
<p>Article III. District Regulations; Section 14 Rural District (R); E. Lot and Yard Specifications (See table)</p> <ul style="list-style-type: none"> • Minimum Lot Size for public or private utilities are “as determined by Planning Board” • Minimum Yard Dimensions (Front, Side, Rear) for public or private utilizes are “as determined by Planning Board” 	<p>The Project will comply with the substantive standards as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>Article IV. General Standards; Section 19 Lot Area, Lot Width and Yards The following standards are generally applicable throughout the Town.</p> <p>A. No land use shall be hereafter commenced on a lot with a street frontage of less than 100 feet unless otherwise provided in this local law.</p>	<p>The Project will comply with the substantive standards as identified in this section.</p>
<p>Article IV. General Standards; Section 25 Sign Regulations</p> <p>C. Signs for Accessory Businesses</p> <p>3) The following types of signs or artificial lighting are prohibited:</p> <ul style="list-style-type: none"> a. Flashing signs, including any sign or device on which the artificial light is not maintained stationary and constant in intensity and color at all times when in use. b. Signs which compete for attention with or may be mistaken for a traffic signal. c. Artificial lighting which directly illuminates an abutting property. <p>D. Signs for Principal Business Uses</p> <p>2) Flashing signs are prohibited, including any sign or device on which the artificial light is not maintained stationary and constant in intensity and color at all times when in use.</p> <p>3) No sign shall be higher than 20 feet from the general elevation of the site.</p> <p>4) No general advertising signs unrelated to the permitted use of the premises are allowed.</p> <p>5) No sign shall project into or over a public right-of-way.</p> <p>6) No sign shall be attached to a public utility pole or traffic control structure.</p>	<p>The Project will comply with the substantive standards as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>7) A maximum of two signs per site is permitted, not to exceed 64 total square feet.</p>	
<p>Article VII. Solar Energy Systems, Section 42. Special Use Permit Standards</p> <p>A. Height and Setback. Large-Scale Solar Energy Systems shall adhere to setback requirements of the underlying zoning district and the structure must not exceed twenty-five feet (25') in height.</p> <p>B. Lot Size. Large-Scale Energy Systems shall be located on lots with a minimum lot size of 5 Acres.</p> <p>C. Lot Coverage. A Large-Scale Solar Energy System that is ground-mounted shall not exceed eighty percent (80%) coverage of the lot on which it is installed. The surface area covered by Solar Panels shall be included in total lot coverage.</p> <p>D. All Ground Mounted Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and at intervisible spacing along the perimeter of the fencing.</p> <p>H. Site plans for all large-scale solar energy systems must demonstrate satisfaction of New York State Department of Agriculture and Markets "Guidelines for Agricultural Mitigation for Solar Energy Projects" if located on farmland in an Agricultural District . . . Large-scale solar energy systems should be concentrated away from, and minimize displacement of, active agricultural land and prime soils, prime if drained soils, and soils of statewide importance.</p> <p>I. Roadways within the site shall be built along field edges and along elevation contours where practical, constructed at grade, have a maximum width of 16', shall not be constructed of impervious materials, and shall be designed to minimize the extent of roadways constructed and soil compaction.</p>	<p>The Project will comply with the substantive standards as identified in this section. In the alternative, a waiver is requested for setbacks. Regarding item (H), the Applicant plans to comply to the maximum extent practicable. The Applicant will consult with AGM if compliance cannot be met.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>J. Any above ground transmission lines that are used to accommodate the facility shall require utility poles that are tall enough and installed at wider spans to readily accommodate farm machinery and equipment. The installation of guy wires to utility poles is discouraged.</p> <p>K. The applicant shall provide the Town with the name and contact information of the new owner within 30 days of the array(s) being sold.</p>	
<p>Article VII. Solar Energy Systems, Section 43. Abandonment and Decommissioning</p> <p>Solar Energy Systems are considered abandoned after twelve (12) consecutive months of discontinued use to generate electrical energy at that site and all equipment above grade and to a depth of four (4) feet below grade shall be removed from the site. In addition, the soil shall also be recompact to a depth of two (2) feet, regraded and reseeded to resemble its original state. The foregoing must be accomplished within not more than one (1) year from the date of cessation of energy generating activities at the site.</p> <p>C. This financial assurance may be in the form of a letter of credit, a bond, escrow account, a parent guarantee or other form approved by the Town.</p>	<p>The Applicant is requesting waivers for all substantive standards in this section. See Section 31(e) above. Siting Board precedent will be followed.</p>
<p>Town of Norfolk</p>	
<p>Code of the Town of Norfolk (2012)</p>	
<p>Chapter 150: Land Use and Development; Part 2 Zoning; Article IX. Supplementary Regulations; Section 150-46 Walls; fences; hedges; visibility at street intersections</p> <p>A. Maintenance setback. In any residential district, any fence, hedge or wall, with the exception of division fences as regulated in § 300 of New York State Town Law, shall be no closer to any lot line fronting on a highway than two feet from the right-of-way or four feet from the inside edge of any existing sidewalk, and no closer than two</p>	<p>The Project will comply with the substantive requirements as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>feet from the lot line to any other side or to the rear.</p> <p>B. Condition. Any fence, wall or hedge shall be maintained in safe and presentable condition and shall be constructed of materials which are compatible with surrounding uses. Barbed wire fences shall not be erected or maintained except for farm purposes.</p> <p>C. Appearance. Fences shall be built with a finished side facing neighboring residential premises.</p> <p>D. Height. No fence, wall or hedge shall exceed three feet in height between the street and the required front setback, nor six feet in height from the setback to the rear maintenance setback, nor six feet in height along the rear maintenance setback, except as otherwise may be provided in these regulations.</p> <p>E. Visibility at street intersections. On a corner lot in any district where a front yard is required, no fence, wall, hedge or other structure or planting, or temporary structure more than three feet in height shall be erected, placed or maintained which obstructs visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 30 feet distant from the point of intersection, measured along said lines.</p>	
<p>Chapter 150: Land Use and Development; Part 2 Zoning; Article IX. Supplementary Regulations; Section 150-52 Signs</p> <p>A. General sign standards</p> <ol style="list-style-type: none"> 1) Condition. Signs must be constructed of durable materials and be maintained in good condition. The Code Enforcement Officer shall determine when a sign has become dilapidated and may order its removal upon approval of the Town Board. 2) Not to be located in public ways. Signs, other than temporary signs 	<p>The Project will comply with the substantive requirements as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>or an official traffic sign, shall not be erected within the right-of-way lines of any public street or highway, nor project beyond property lines.</p> <p>3) Permitted signs. A permit shall be required for the erection, alteration or reconstruction of any business or advertising sign.</p> <p>4) Temporary signs. Temporary signs erected for special events or property sale, rental or repair are exempt from permitting. All temporary signs shall be removed by the property owner or his agent when the circumstances leading to their use no longer apply.</p> <p>C. Commercial District signs.</p> <p>1) Principal and accessory sign. One principal business sign which shall not project into a public street right-of-way and shall not be closer than 10 feet to any lot line, except where such is attached to and flush with the face of any building. No attached or unattached sign shall be higher than the principal building to which it is accessory, and no sign shall be erected upon the roof of any building. The gross surface area of a business sign in the commercial districts shall not exceed two square feet per lineal foot of building frontage for nonilluminated signs, or one square foot per lineal foot of building frontage for illuminated signs.</p> <p>2) Sign clearance and illumination. All business signs shall have sufficient clearance so as to provide clear and unobstructed visibility for vehicles entering and leaving the highway and, if illuminated, the light shall not be directed toward any public highway or adjacent residential use.</p> <p>D. Residential-Agricultural District signs. In Residential-Agricultural Districts, the applicable signs above are permitted and, in</p>	

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>addition, a business sign is permitted where applicable, provided that such signs shall not exceed 32 square feet in area, and, if illuminated, the light shall not be directed toward any public highway or adjacent residential property.</p>	
<p>Chapter 150: Land Use and Development; Part 2 Zoning; Article IX. Supplementary Regulations; Section 150-54 Maintenance of yards and structures</p> <p>C. Maintenance standards.</p> <p>1) Exterior of premises. The exterior of all premises shall be kept free from hazards, which include but are not limited to the following:</p> <ul style="list-style-type: none"> a. Garbage and rubbish, as defined in Part 3 of this chapter. b. Unsafe structures: structurally unsafe or unsound buildings, structures or fences or abandoned, uncovered or structurally unsound wells, shafts, towers, exterior cellar openings, basement hatchways, foundations or excavations. c. Discarded appliances: unscreened, abandoned refrigerators, boilers, hot water heaters, television sets and other similar major appliances. d. Natural growth: dead and dying trees and limbs or other natural growth which, by reason of rotting or deteriorating condition or storm damage, constitute a hazard to persons in the vicinity thereof. Trees shall be kept pruned and trimmed to prevent such condition. e. Ground surface hazards: hidden or uncovered ground or surface hazards, such as 	<p>The Project will comply with the substantive requirements as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>sharp or jagged projections or obstructions.</p> <p>f. Infestation: rodents, vermin, pest infestations and conditions causing the same.</p> <p>2) Open storage. No furniture, equipment, or other merchandise shall be stored or displayed in any yard area for longer than 10 days. All such materials and equipment shall be stored in an enclosed building or so located upon the premises as not to be visible from public roads or adjacent properties.</p> <p>3) Unlicensed motor vehicles. No parking or storage of an unlicensed motor vehicle, including trailers, shall be permitted in any front or side yard as defined in the Table of Uses for more than 10 days. Unlicensed vehicles shall be stored in locations which provide visual screening from public roads and adjacent properties.</p>	
<p>Chapter 150: Land Use and Development; Part 2 Zoning; Article X. Special Uses; Section 150-58 Application of standards to certain uses</p> <p>J. Public utility.</p> <p>1) Such facility shall not be located on a residential street, unless no other site is available, and shall be so located as to draw a minimum number of vehicular traffic to and through such streets.</p> <p>2) The location and operation of such facility shall not adversely affect the character of the surrounding residential area.</p> <p>3) Adequate fences, barriers and other safety devices shall be provided, and the facility shall be screen-planted in accordance with the provisions of § 150-47 of this Part 2.</p>	<p>The Project will comply with the substantive requirements as identified in this section.</p>
<p align="center">Town of Norfolk, Local Law No. 2 of 2020: A Local Law to regulate Solar Energy Facilities</p>	

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities; E: Major Solar Systems 1-2. (a) Height and Setback Restrictions</p> <p>iv. The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 15 feet in height above the ground.</p> <p>v. The minimum setback from property lines shall be 25 feet, unless adjacent to residential neighbor. The setback for residential neighbors shall be 100 feet.</p> <p>vi. Setbacks. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar PV related equipment or parts.</p> <p>vii. Setbacks in a residential district and a residential-agricultural district. The location of solar collectors shall meet all applicable setbacks for accessory structures in the residential or residential agriculture zoning district where the project is to be located, but not less than twenty-five (25) feet from any public highway right-of-way or utility easement, and natural vegetation shall be preserved within this buffer zone and, where possible, augmented with additional plantings.</p> <p>viii. The setbacks are intended to provide a visual buffer between the PV system and adjacent dwellings or uses. Plantings within this area are to be at a height so as to provide, as much as practicable, a visual screen of the Permitted System from residential uses. The species type, location and planned height of such landscaping shall... to the extent possible shall consist of native plantings.</p> <p>viii. Fencing may be provided around all equipment and solar collectors to provide screening from adjacent residential properties and roads. Fencing shall not be topped with barbed wire. When fencing will</p>	<p>The Project will comply with the substantive standards as identified in this Section with the exception of item (iv). The Applicant is requesting a waiver for array height. See Section 31(e) above.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>enclose the perimeter of the site or facility, wildlife friendly fencing that allows the passage of small mammals and reptiles and is designed to minimize wildlife injury and death due to entanglement or strangulation shall be used on sites having a solar facility footprint greater than 5 acres. Exceptions can be made by the Planning Board for sites that have limited surrounding wildlife habitat as indicated in the applicant's Environmental Assessment Form (EAF).</p>	
<p>Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities; E: Major Solar Systems 1-2. (b) Design Standards</p> <ul style="list-style-type: none"> i. Removal of trees and other existing vegetation should be minimized or offset with planting elsewhere on the property. ii. Removal of any prime agricultural soil from the subject parcel is prohibited. iii. Proposed major solar collection systems shall minimize the displacement of prime soils that are in active agricultural production. iv. Roadways within the site shall be built along field edges and along elevation contours where practical, constructed at grade and have a maximum width of 16 feet. Roadways shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction. v. All on-site utility and transmission lines shall, to the extent feasible, be placed underground. Any above ground transmission lines that are used to accommodate the facility shall require utility poles that are tall enough and installed at widths able to accommodate farm machinery and equipment. The installation of guy wires to utility poles is discouraged. vi. Solar collectors and other facilities shall be designed and located in order to minimize reflective glare and/or glint toward any 	<p>The Project will comply with the substantive requirements as identified in this section, except with respect to (i), where the Project is requesting a waiver. As to (ii) – (ix), the Project will comply, to the maximum extent practicable, with the Article 10 legal standard. See section 31(e) above.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>inhabited buildings on adjacent properties and roads.</p> <p>vii. All mechanical equipment, including any structure for batteries or storage cells, shall be enclosed by a minimum six-foot-high fence with a self-locking gate.</p> <p>viii. Major systems or solar farms shall be constructed in a fashion so as to not obstruct solar access to adjacent properties.</p> <p>ix. Any exterior lighting installed within the facility shall be downcast and dark sky compliant with recessed bulbs and full cut off shields.</p>	
<p>Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities; E: Major Solar Systems 1-2. (c) Signs</p> <p>iii. Solar equipment and any system-related fencing shall not be used for displaying any advertising. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on solar equipment except: (a) the manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a federal, state or local agency or any potential first responders; and (d) signs that provide a 24-hour emergency contact phone number and warn of any danger.</p> <p>iv. A sign not to exceed twelve square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number.</p> <p>v. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations not to exceed four square feet.</p>	<p>The Project will comply with the substantive requirements as identified in this section.</p>
<p>Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities; E: Major Solar Systems 3.</p>	<p>The Project will comply with the substantive requirements as identified in this section.</p>

Table 31-4. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Requirement	Project Compliance
<p>A piece of equipment meets the definition of oil-filled operational equipment at 40 CFR part 112.2 (e.g. transformers, capacitors and electrical switches) shall comply with the secondary containment procedures of that regulation.</p>	
<p>Section 1: Chapter 112 of the Town Code of the Town of Norfolk is amended to add the following section: Solar Energy Facilities; E: Major Solar Systems 4. Decommissioning</p> <p>b. Decommissioning Bond:</p> <p> i. The amount of the surety required under this section shall be 125% of the projected cost of removal of the Solar Energy System and restoration of the property with an escalator of 2% annually for the life of the Solar Energy System. Owner or operator shall have one (1) year from written notice to remove the Solar Energy System including any associated accessory structures and/or equipment, and restore the site to a condition approved by the Planning Board.</p>	<p>The Applicant is requesting waivers for all substantive standards in this section. See Section 31(e) above. Siting Board precedent will be followed.</p>

31(j) Zoning

The Project Area is located in the Residential-Agricultural (R-A) District within the Town of Massena, the Rural (R) District and Resource Conservation District (RC) within the Town of Brasher, and the Residential-Agricultural (R-A) and Commercial-Highway (C-H) Districts within the Town of Norfolk.

Utilities are allowed uses requiring site plan review and approval as provided in Section 207-16 of the Town of Massena Zoning Code. Large-Scale Solar Energy Systems are allowed uses by a Special Use Permit and are subject to site plan review as provided in Section 2.02 of the Town of Brasher Solar Law. Major Solar Collection Systems are allowed uses by a Special Use Permit and are subject to site plan review as provided in Section E of the Town of Norfolk Local Law No. 2 of 2020. These procedural requirements are supplanted by Article 10.

Table 31-5. Town Zoning Districts by Project Area Parcel

Parcel ID	Zoning District	Town	Allowed Use
10.004-12-1	Rural District	Brasher	Large-scale solar system allowed by Special Use Permit
10.004-3-1.21	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
17.001-1-20.11	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
17.001-1-15	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
10.004-11-2.11	Rural District	Brasher	Large-scale solar system allowed by Special Use Permit
10.004-12-2	Rural District	Brasher	Large-scale solar system allowed by Special Use Permit
10.004-3-48	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
17.001-2-45	Rural District & Resource Conservation District	Brasher	R District- Large-scale solar system allowed by Special Use Permit RC District- no development proposed in R-C zone
17.001-2-38.1	Rural District & Resource Conservation District	Brasher	R District- Large-scale solar system allowed by Special Use Permit RC District- no development proposed in R-C zone
16.004-3-2.1	Residential-Agricultural & Commercial Highway	Norfolk	Major/Large-scale Solar System allowed by Special Use Permit
17.003-3-2	Rural District & Resource Conservation District	Brasher	R District- Large-scale solar system allowed by Special Use Permit

Table 31-5. Town Zoning Districts by Project Area Parcel

Parcel ID	Zoning District	Town	Allowed Use
			RC District- no development proposed in R-C zone
17.003-3-15.22	Rural District & Resource Conservation District	Brasher	R District- Large-scale solar system allowed by Special Use Permit RC District- no development proposed in R-C zone
16.004-3-17.121	Residential-Agricultural & Commercial Highway	Norfolk	Major/Large-scale Solar System allowed by Special Use Permit
16.004-3-2.2	Residential-Agricultural & Commercial Highway	Norfolk	Major/Large-scale Solar System allowed by Special Use Permit
17.001-2-8	Rural District	Brasher	Large-scale solar system allowed by Special Use Permit
10.003-3-30.2	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
17.001-2-27.12	Rural District	Brasher	Large-scale solar system allowed by Special Use Permit
17.002-1-1.11	Rural District	Brasher	Large-scale solar system allowed by Special Use Permit
10.004-3-61	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
10.004-3-62	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
10.004-3-63	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit
10.004-3-64	Residential-Agricultural	Massena	Major solar system allowed by Special Use Permit

31(k) Towns of Massena, Brasher, and Norfolk Applicable Laws, Codes, and Regulations

A copy of the applicable Town of Massena, Brasher, and Norfolk laws and ordinances are attached hereto as Appendices 31-1 through 31-5 along with SEQRA documentation as applicable.

References

Town of Brasher, St. Lawrence County, New York, Zoning Regulations (Local Law No. 2 of 2020), December 2020.

Town of Massena, St. Lawrence County, New York, Massena Code (Chapter 207: Zoning), 2009.

Town of Massena, St. Lawrence County, New York, Massena Code (Chapter 207, Attachment 5: Zoning Map), May 2009.

Town of Massena, St. Lawrence County, New York, Local Law to regulate Solar Energy Facilities in the Town (Local Law No. 2 of 2020), October 2020.

Town of Norfolk, St. Lawrence County, New York, Code of the Town of Norfolk, June 2012.

Town of Norfolk, St. Lawrence County, New York, Local Law to regulate Solar Energy Facilities in the Town (Local Law No. 2 of 2020), July 2020.